

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION

MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**THE PLAINTIFFS' STEERING COMMITTEE'S PROPOSED AGENDA
FOR THE SEPTEMBER 10, 2015 STATUS CONFERENCE***

The Plaintiffs' Steering Committee proposes the following agenda for the September 10, 2015 status conference. The defendants, the Post Confirmation Officer, the FDA, the Massachusetts Board of Registration in Pharmacy, and the U.S. Attorney's office have been given an opportunity to comment on this proposed agenda.

A. MOTIONS FOR WHICH ORAL ARGUMENT IS REQUESTED

1. Responses to Court's Order Regarding Jurisdiction Pursuant to 28 U.S.C. § 1334(b) in Certain New Hampshire Cases [Dkt. 2103] (*See* #23, *infra*)

B. REPORT TO THE COURT

2. Status of bankruptcy
 - a. Order granting Post Confirmation Officer's Motion for Partial Withdrawal of the Reference re Implementing Plan [Dkt. 2194]
3. Status of insurance declaratory actions
 - a. *Certain Underwriters at Lloyd's, London v. Ameridose et al.*, 1:13-cv-12609-FDS; *Ironshore Specialty Ins. Co. v. Ameridose et al.*, 1:13-cv-13000-FDS
 - b. *State Farm Fire and Casualty Company v. Specialty Surgery Center PLLC, et al.*, 2:15-cv-00026 (M.D. Tenn.)
4. Status of discovery
 - a. PSC's Unopposed Motion for Entry of Qualified Protective Order

* Judge Boal set oral argument on Saint Thomas Entities' Motion to Compel Invoking Defendants to Produce Certain Documents, #15 [Dkt. 2117, 2118], for 3:30 p.m. tomorrow, September 9, 2015. The PSC is not separately filing a proposed agenda for that hearing. All other pending discovery-related motions are reflected in this agenda.

Regarding Production of Certain Information Maintained by the Tennessee Department of Health [Dkt. 2129]

- b. Court rulings update
 - a. Order granting in part and denying in part Inspira's Motion for Protective Order [Dkt. 2142]
 - b. Order denying Motion to Quash Saint Thomas Entities' Subpoena, Deposition Notice, and Document Request to Dr. Philip J. Austin [Dkt. 2147]

5. Status of litigation track

- a. Order dismissing with prejudice all claims against settling defendants [Dkt. 2193]
- b. U.S.'s Motion to Intervene and for a Stay of Certain Depositions Pending Resolution of Related Criminal Proceedings and Opposition to the Saint Thomas Entities' Motion to Compel Production of Criminal Discovery [Dkt. 2209]
- c. *Ex parte* Motion Regarding Reconsideration of Judge Boal's Order [Dkt. 2123] as it Relates to Lisa Cadden's Deposition (*filed under seal*) [Dkt. no. unknown]
- d. Status of Tennessee Bellwether process

6. Report from Federal-State Liaison

7. Report from *Pro Se* Liaison

8. Status of appeal

9. Schedule for future status conferences

- a. October 14, 2015 at 11:30a.m. (Boal) and 2:00 p.m. (Zobel)

C. FULLY BRIEFED MOTIONS

Unopposed Motions

- 10. Unopposed Motion of Plaintiffs Richard Esposti and Danielle Esposti for Leave to File Second Amended Complaint, [*Esposti et al. v. Cadden et al.*, No. 1:14-cv-14086; Dkt. 11]
- 11. Plaintiffs' Unopposed Motion to Amend Complaint [*Simas et al. v. New England Compounding Pharm. Inc. et al.*, No. 1:13-md-2419; Dkt. 14]

12. Ameridose's Unopposed Motion to Destroy 100 Pallets of Paper Records Pertaining to its Recalled Products [Dkt. 1981]

Discovery-Related Motions

13. Bellwether Submissions (*replies waived*) (*oral argument requested*)
 - a. PSC's Memorandum on Initial Trial Setting and Pretrial Deadlines for the Saint Thomas-Related Defendants [Dkt. 1866]
 - b. Saint Thomas Entities' Proposal for Bellwether Trials [Dkt. 1870]
 - c. Tennessee Clinic Defendants' Memorandum on Bellwether Trials [Dkt. 1871]
14. Tennessee Clinic Defendants' Motion to Compel PSC to Respond to Discovery Served by the Tennessee Clinic Defendants and Motion to Deem Requests Admitted [Dkt. 1830] (*no oral argument requested*)
 - a. Stipulation on Extension of Time for PSC to Respond [Dkt. 1873]
 - b. PSC's Opposition [Dkt. 1887]
15. Saint Thomas Entities' Motion to Compel Invoking Defendants to Produce Certain Documents [Dkt. 2117, 2118] (*oral argument set for 9/9/2015 at 3:30 p.m. before Magistrate Judge Boal*)
 - a. APAC Pain Management, BKC, Cincinnati Pain Management et al.'s Notice of Joinder in Motion to Compel [Dkt. 2126]
 - b. Invoking Defendants' Opposition and Cross-Motion for Protective Order [Dkt. 2206]
 - c. Saint Thomas Entities' Reply (*forthcoming*)
16. Tennessee Clinic Defendants' Motion to Revise (or to Reconsider) Order Granting the Trustee a Protective Order Precluding the Tennessee Clinic Defendants from Deposing NECC [Dkt. 2185, 2186] (*no oral argument requested*)
 - a. Trustee's Response (*forthcoming*)
17. Saint Thomas Entities' Motion to Compel Ameridose LLC to Produce Documents Requested in the STE's Second Request for Production [Dkt. 2188, 2189]
 - a. Ameridose's Response (*forthcoming?*)
18. Tennessee Clinic Defendants' Motion to Compel Compliance with Subpoena to NECC [Dkt. 2190, 2191] (*oral argument requested*)

- a. Trustee's Response (*forthcoming*)

Motions for which Oral Argument has Been Held/Waived

- 19. PSC's Memorandum Regarding Court's Authority to Conduct Trials Pursuant to 28 U.S.C. § 157(b)(5) [Dkt. 2055] (*oral argument held 8/5/15*)
 - a. Premier Defendants' Response [Dkt. 2084]
 - b. Tennessee Clinic Defendants' Response [Dkt. 2089]
 - c. Saint Thomas Entities' Response [Dkt. 2090]
 - d. Specialty Surgery Clinic Defendants' Response [Dkt. 2091]
 - e. PSC's Reply [Dkt. 2131]
 - f. Saint Thomas Entities' Assented-to Request for Oral Argument on PSC's Memorandum [Dkt. 2137]
- 20. Box Hill Defendants' Motion to Dismiss [Dkt. 1639] (*no oral argument requested*)
 - a. Consolidated Plaintiffs' Opposition [Dkt. 1944]
 - b. Box Hill Defendants' Reply [Dkt. 2053]
- 21. Ohio Medical Defendants' Motion to Dismiss [Dkt. 2099]

Other Motions

- 22. Motion to Withdraw as Attorney for GDC [Dkt. 1947]
- 23. Responses to Court's Order Regarding Jurisdiction Pursuant to 28 U.S.C. § 1334(b) in Certain New Hampshire Cases [Dkt. 2103] (*oral argument requested*)
 - a. Plaintiff Jojayra Garcia's and Cheryl A. McCarthy's Response [Dkt. 2176]
 - b. Plaintiff Lecia J. Golden's Joinder to Plaintiff Garcia's and McCarthy's Response [Dkt. 2177]
 - c. Defendants' Response
 - i. *Garcia v. O'Connell et al.*, 15-cv-12818 [Dkt. 17]
 - ii. *Peckham v. O'Connell et al.*, 15-cv-12347 [Dkt 18]
 - d. Plaintiffs' Reply (*forthcoming*)
- 24. New Hampshire Defendants' Motion to Dismiss or Abstain From Jurisdiction
 - a. *Garcia v. O'Connell et al.*, 15-cv-12818 [Dkt. 16]
 - b. *Peckham v. O'Connell et al.*, 15-cv-12347 [Dkt 17]
 - c. Plaintiffs' Response (*not yet due*)

25. Choice of Law Briefing

a. Letters

- i. Premier Defendants' Letter [Dkt. 1915]
- ii. BKC Defendants' (et al.) Letter [Dkt. 1921]
- iii. Box Hill Defendants' (et al.) Letter [Dkt. 1922]

b. Three Pagers

- i. PSC's Statement [Dkt. 1924]
- ii. Trustee's Statement [Dkt. 1925]
- iii. Saint Thomas Entities' Statement [Dkt. 1926]
- iv. Tennessee Clinic Defendants' Statement [Dkt. 1942]
- v. Premier Defendants' Statement [Dkt. 1927]
- vi. GDC's Statement [Dkt. 1928]
- vii. FDA's Statement [Dkt. 1948]

c. Order re Choice of Law Issues [Dkt.1938]

d. Briefs in Response to Order:

- i. PSC's Response [Dkt. 2004]
- ii. Ameridose's Joinder in PSC's Memorandum Regarding Choice of Law for cases filed in TN and NJ [Dkt. 2018]
- iii. Saint Thomas Entities' Response [Dkt. 2071]
- iv. Tennessee Clinic Defendants' Response [Dkt. 2073]
- v. Specialty Surgery Clinic Defendants' Response [Dkt. 2064]
- vi. Premier Defendants' Response [2072]
- vii. Bhagat and Perkins' Response [Dkt. 2074]
- viii. PSC's Reply [Dkt. 2097]

D. BRIEFING IN PROGRESS

- 26. Leona Corker's Petition for Approval of Compromise Settlement in Wrongful Death Claim Pursuant to VA Code § 9.01-55 [Dkt. 2172] (*oral argument requested*)
- 27. Joint Motion to Quash Deposition Subpoenae [Dkt. 2211, 2212]
 - a. Response to Joint Motion to Quash [Dkt. 2215]
- 28. Motion to Quash Affidavit of Stephen Haynes [Dkt. 2213]
- 29. Motion to Quash Affidavit of Owen Finnegan [Dkt. 2214]

Dated: September 8, 2015

Respectfully submitted,

/s/ **Kristen A. Johnson**

Thomas M. Sobol, BBO # 471770

Kristen A. Johnson, BBO # 667261

HAGENS BERMAN SOBOL SHAPIRO

LLP

55 Cambridge Parkway, Suite 301

Cambridge, MA 02142

(617) 482-3700

tom@hbsslaw.com

kristenj@hbsslaw.com

*Plaintiffs' Lead Counsel on behalf of the
Plaintiffs' Steering Committee*

CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the above Proposed Agenda to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: September 8, 2015

/s/ **Kristen A. Johnson**

Kristen A. Johnson, BBO # 667261